

HOUSE BILL 372
By Westmoreland

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 17, Part 13, relative to unlawful carrying, possession or discharge of weapons.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-17-1307, is amended by deleting the section in its entirety and substituting instead the following:

(a)

(1) A person commits an offense who carries a firearm with the intent to go armed.

(2) Except as provided in subdivisions (a)(3) and (a)(6), an offense under subdivision (a)(1) is a Class B misdemeanor.

(3) An offense under subdivision (a)(1) is a Class A misdemeanor if any of the following enhancement factors apply:

(A) The defendant has a prior conviction for a violation of Tennessee Code Annotated, Title 39, Chapter 17, Part 13;

(B) The defendant has a prior conviction for a violation of §39-13-101;

(C) The defendant has a prior conviction for a violation of §39-13-111; or

(D) The defendant has a prior conviction for a violation of §39-17-418.

(4) A person convicted of a first violation under subdivision (a)(3) shall be sentenced to not less than thirty (30) days nor more than eleven (11) months and twenty-nine (29) days. Any sentence imposed under this subdivision shall be served day for day at one hundred percent (100%).

(5) A person convicted of a second violation under subdivision (a)(3) shall be sentenced to not less than sixty (60) days nor more than eleven (11) months and twenty-nine (29) days. Any sentence imposed under this subdivision shall be served day for day at one hundred percent (100%).

(6) Notwithstanding any other provision of law to the contrary, a third or subsequent violation of subdivision (a)(3) is a Class E felony and a person so convicted shall be sentenced to not less than one hundred fifty (150) days nor more than the maximum punishment authorized for the appropriate range of a Class E felony, which shall be served day for day at one hundred percent (100%).

(7) No person convicted under subdivision (a)(3) shall be eligible for suspension of prosecution, pretrial diversion or judicial diversion nor shall any person convicted under such subdivision be eligible for suspension of sentence or probation until such time as such person has fully served day for day at least the minimum sentence provided by law.

(b)

(1) A person commits an offense who possesses a firearm and has been convicted of a felony in this state or under the laws of any other state,

government or country which, if committed in this state, would have constituted a felony offense in this state. In the event that a felony from a jurisdiction other than Tennessee is not a named felony in this state, the elements of the offense shall be used by the Tennessee court to determine what classification the offense is given.

(2) An offense under subdivision (b)(1) is a Class E felony, unless the prior felony conviction of the defendant is first degree murder, a Class A felony or a Class B felony, in which event, the offense is a Class D felony. Any sentence imposed under this subdivision shall be served consecutively to any other conviction for an offense arising out of the same criminal transaction.

(c)

(1) A person commits an offense who possesses a firearm during the commission of an offense, attempt to commit an offense or the escape from an offense.

(2) An offense under subdivision (c)(1) is a Class E felony and shall be served consecutively to any sentence imposed for the underlying offense or offenses.

(d)

(1) A person commits an offense who employs a firearm during the commission of an offense, attempt to commit an offense or the escape from an offense.

(2) An offense under subdivision (d)(1) is a Class C felony and shall be served consecutively to any sentence imposed for the underlying offense or offenses.

(e) A conviction for an offense under subsections (b),(c) or (d) shall render the defendant ineligible for probation notwithstanding any other provision in the law to the

contrary and any sentence imposed shall be served day for day at one hundred percent (100%). No person convicted under this section shall be eligible for pretrial diversion, judicial diversion, suspension of sentence, probation, sentencing under the Tennessee Community Corrections Act, T.C.A. §§40-36-101, **et seq.**, or any other sentence involving release into the community.

(f) Any violation of this section shall require mandatory confiscation and forfeiture of the firearm.

(g)

(1) A person commits an offense who carries with intent to go armed a knife with a blade exceeding four inches (4") or a club.

(2) An offense under subdivision (g)(1) is a Class C misdemeanor.

SECTION 2. Tennessee Code Annotated, Section 39-17-1306(a), is amended by deleting the language "prohibited by §39-17-1302(a)," and by substituting instead the language "prohibited by §39-17-1302(a) or §39-17-1307,".

SECTION 3. Tennessee Code Annotated, Section 39-17-1302(d)(1), is amended by deleting the subdivision in its entirety and substituting instead the following:

(d)

(1) An offense under subdivisions (a)(1)-(5) is a Class C felony and shall render the defendant ineligible for probation notwithstanding any other provision in the law to the contrary and any sentence imposed shall be served day for day at one hundred percent (100%). No person convicted under subdivisions (a) (1)-(5) shall be eligible for pretrial diversion, judicial diversion, suspension of sentence, probation, sentencing under the Tennessee Community Corrections Act, T.C.A. §§40-36-101, **et seq.**, or any other sentence involving release into the community.

SECTION 4. Tennessee Code Annotated, Title 39, Chapter 17, Part 13, is further amended by adding the following as a new, appropriately designated section:

Section 39-17-1361.

(a)

(1) It is an offense for a person to knowingly discharge a firearm from a vehicle or while utilizing a vehicle and thereby cause serious bodily injury to another person.

(2) Any person who commits the offense under this subsection is guilty of a Class A felony.

(b)

(1) It is an offense for a person to knowingly discharge a firearm from a vehicle or while utilizing a vehicle and thereby cause bodily injury to another person.

(2) Any person who commits an offense under this subsection is guilty of a Class B felony.

(c)

(1) It is an offense for a person who, from a vehicle or while utilizing a vehicle, discharges a firearm in a manner that creates a substantial risk of bodily injury to another person or who causes property damage to a habitation.

(2) Any person who commits the offense under this subsection is guilty of a Class C felony.

(d) It shall not be a defense under this section that the person temporarily exited the vehicle to accomplish the act.

(e)

(1) Any vehicle used by the owner, or anyone acting with the knowledge and consent of the owner, during the commission of a violation of this section shall, upon conviction, be forfeited.

(2) Property which is forfeitable based on this section shall be forfeited pursuant to and in accordance with the procedures for forfeiture in Tennessee Code Annotated Title 40, Chapter 33, Part 1.

SECTION 5. This act shall take effect July 1, 2001, the public welfare requiring it.